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C O N F I D E N T I A L SECTION 01 OF 03 ISLAMABAD 000109

SIPDIS

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SUBJECT: PAKISTAN BRIEFS DIPLOMATS ON MUMBAI ATTACKS

REF: ISLAMABAD 93

Classified By: Anne W. Patterson for reasons 1.4 (b), (d).

¶1. (C) Summary: On January 19, Pakistani Foreign Minister Qureshi and Interior Minister Malik briefed the diplomatic corps on Pakistan's ongoing investigation of the Mumbai attacks. Malik was annoyed the MFA declined to invite the Indians to the briefing, and he followed up with a separate briefing for the Indian High Commissioner. Malik promised results in the form of formal charges within two weeks. Both Malik and Qureshi renewed their call for India's cooperation in a joint investigation, and Malik urged Indian cooperation to provide evidence required to prosecute suspects in Pakistan.

¶2. (C) Prior to the formal briefing, Ambassador met with Malik privately. Malik said his goal was to demonstrate quickly a serious GOP intent to prosecute and to frame cooperation with the U.S. in a way that makes Pakistan appear to be the demandeur. He plans to file formal charges within 10 days for cyber crimes violations as a first step; this will include visits to the U.S., Italy and Austria, which have all hosted Jamaat-ud-Dawa websites. He plans to send a top investigatory team to visit the FBI in Washington--essentially to provide political cover for access/cooperation he has already promised us.

¶3. (C) In a separate meeting, Law Minister Naek explained to Ambassador the legal steps the GOP was taking to move the investigation under federal control. President Zardari will approve an ordinance to create a federal Anti-Terrorism Court with jurisdiction over extra-territorial actions. This will allow Pakistan to try those responsible without referring the case to the Punjab provincial courts under the control of Nawaz Sharif. For now, however, the GOP is trying to show visible progress toward prosecution of those responsible for the Mumbai attacks. End Summary.

AMBASSADOR MEETS WITH MALIK  
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¶4. (C) Ambassador and A/DCM met privately January 19 with Interior Minister Malik prior to his briefing to the diplomatic corps. Malik said he had already prepared a draft "First Instance Report" (FIR) and said he would register a case within 10 days, after the FIR had been reviewed by Law Ministry. The FIR is based on an initial inquiry (in progress) and is followed by a formal investigation. Malik said he will charge the suspects with cyber crimes violations, and he said the case would be registered in a newly established federal Anti-Terrorism Court (see below).

Malik claimed the suspects are already being interrogated by the Ministry of Interior (MOI) while they are held in safe houses (presumably by the Inter-Services Intelligence (ISI)). Malik confirmed that he had ISI DG Pasha's approval, as well as approval from President Zardari and Prime Minister Gilani.

15. (C) Malik praised the FBI interview of Kasab and said he was carefully assigning investigators to track down each portion of his testimony, including who purchased the boat and the identities of the personnel at the training camps. Malik has also prepared a timeline of events surrounding the attacks which he plans to forward to the Indians to help fill in the gaps. Regarding the murder of the fishing boat captain, Malik said he needed help from India to pursue the murder case. He plans to send emissaries to Italy, Austria, and the U.S. to seek more information about the Jamaat-ud-Dawa (JUD) websites based overseas. Without explaining why, Malik said he is convinced that some of the planning for the attack took place in Italy. Rather than FBI Director Mueller visiting Pakistan, Malik wants to send a team to the U.S. to "take information to the FBI." For public consumption, Malik wants to make cooperation with the FBI look like a GOP initiative where the U.S. will be responding to Pakistani requests.

#### MALIK & QURESHI BRIEF DIPLOMATS

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16. (C) On January 19, Foreign Minister Qureshi, Foreign Secretary Salman Bashir and Interior Minister Malik gave the diplomatic corps an update on the Mumbai investigation. Malik

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later told Ambassador he was annoyed the MFA had not invited the Indians, so he gave the Indian High Commissioner a separate briefing. Qureshi stressed the two concrete proposals which the GOP has put forth: joint investigations through a bilateral commission and a high-level governmental visit. Pakistan awaits an answer from India on both these proposals. Qureshi mentioned the Indian dossier and said that Pakistan was giving this information its "utmost consideration." The Foreign Minister pointed to India's troop build up along the border with Pakistan, violations of Pakistani airspace, and inflammatory statements by Indian leaders as reasons that Pakistan had to increase military preparedness and that Pakistan was ready to defend itself. Qureshi stressed the need for dialogue to calm tensions and thanked various international dignitaries, including the Secretary and Vice-President elect Biden, for their visits and efforts in this regard. He closed his introduction by highlighting the initiation of several actions, including the Pakistani inquiry against JUD.

17. (C) Malik presented a general overview of Pakistan's history as a victim of terrorism and the repercussions Pakistan still faces from the Afghan-USSR war. He also described the GOP's response to terrorism in the Federally Administered Tribal Areas (FATA). Overall Malik made the point that Pakistan has long suffered the ill-effects of terrorism, both in terms of security and economy. He stressed that stability and countering terror were the GOP's main goals both within Pakistan and regionally. He blamed Al-Qaida and the Taliban for trying to spread their warped ideology across the region, specifically into India. Malik said he was personally in charge of helping India in this investigation seriously and transparently.

18. (C) Malik outlined the actions that the GOP has taken so far in the Mumbai-related investigation. At the federal level, an inquiry has been ordered and the terms of reference for the Federal Investigation Agency (FIA) team have been delineated. The terms of reference instruct the FIA task force to: establish legally verifiable credentials of suspects allegedly involved in the terrorist attack; inquire into the available information supplied by India with the view to transforming it into evidence for further legal

action; and collect other related evidence for legal action under the laws of Pakistan. As he briefed to the press on January 15 (reftel), Malik outlined GOP actions since JUD was banned. These actions include the surveillance or house arrest of 124 JUD activists or associates, the detentions of 71 JUD activists, the seizure of 143 JUD offices, the freezing of 13 bank accounts, the closure of 7 JUD publications, blocking 6 web sites, and several other related police actions.

¶9. (C) Malik said that he faced many challenges in his investigation that could be overcome by more Indian cooperation. He suggested that if the Indians did not want a joint investigation, that the GOI go through the Indian court system to forward a formal judicial endorsement to Interpol that would then be sent to Pakistan to further the prosecution. Malik reiterated his offer for law enforcement and technical cooperation between the MOI and the Indian Home Ministry. Since the crime scene is India, and the alleged culprits are Pakistani non-state actors, early cooperation is in the best interest of all involved, opined Malik. In conclusion, Malik offered that in two weeks his FIA-lead inquiry team would have good news and results to report.

#### NAEK EXPLAINS THE LEGAL DETAILS

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¶10. (C) After the diplomatic briefing, Ambassador and A/DCM met with Law Minister Farouq Naek to discuss the legal intricacies of a successful prosecution in Pakistan. Naek, who had not yet seen Malik's draft FIR, explained that under Pakistani law the steps required for prosecution involved an inquiry (which as already begun), registering an FIR, after the FIR's approval an investigation, and then a charge sheet. In terms of jurisdiction, the Pakistani penal code provided for extra-territorial crimes as long as there is some link to Pakistan. However, the crimes charged under the penal code would require hearings under a provincial sessions court which may take years to go to trial. Also, in this case, the Punjab courts, where the GOP's political rivals control the

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government, would have jurisdiction. The ATA provided for more efficient prosecution, however, currently did not have an option for extra-territorial jurisdiction. The ATA trial would be held in a newly created federal court, and the Law Minister (Naek himself) would choose both the prosecutors and the judges, thus improving the chances of convictions.

¶11. (C) Naek said he has drafted a presidential ordinance for changes to the ATA, which will go to PM Gilani for approval on January 20 and then to Zardari for his signature. The ordinance will alter the ATA in several ways, including: increasing the allowable detention period from 14 days to 90 days; providing for extra-territorial jurisdiction; and establishing a federal ATA court in Islamabad. The appeals from the new federal bench of the ATA court will go to the Islamabad High Court and then the Supreme Court of Pakistan. Naek also clarified that any confessions before police officers were not/not admissible under Pakistani law. Admissible confessions had to be made in front of magistrates or other judicial officers. Currently, Hafiz Saeed and other JUD suspects were being held in preventative detention under the Maintenance of Public Order (MPO). Naek had recommended that the MOI charge Saeed and the others once the FIR was filed and then move the suspects from provincial custody to FIA custody. Naek also cautioned that cyber crimes are a bailable offense, and to ensure ATA jurisdiction the FIR should be drafted to link the cyber activity to actual terrorist acts.

¶12. (C) Comment: Malik is personally charged with the Mumbai-related investigation, and he is trying to produce concrete results every day for the international community. At the same time, he is trying to build domestic support by framing the process in a way that makes the GOP (not India or

the U.S.) appear to be the demandeur. Working out all the legal aspects of the process clearly will take some time, however. Malik's FIA team needs to choose the right crimes and venues under Pakistani law to successfully prosecute the perpetrators, and he will need additional evidence from India to make the prosecution successful. End Comment.  
PATTERSON